KIRKLEES METROPOLITAN COUNCIL
INVESTMENT & REGENERATION SERVICE

DEVELOPMENT MANAGEMENT

Town and Country Planning Act 1990 (as amended) – SECTION 70

DELEGATED DECISION TO DETERMINE PLANNING APPLICATIONS

Reference No:	**2022/62/90266/E**
Site Address:	Upper Lane Fisheries, 14, Upper Lane, Emley, Huddersfield, HD8 9RE
Description:	Change to opening hours and installation of extraction system to rear
Recommending Officer:	Jennifer Booth

DECISION - REFUSED

I hereby authorise the refusal of this application for the reasons set out in the officer's report and recommendation annexed below in respect of the above matter.

Emma Thompson

AUTHORISED OFFICER

Date: 18-Jul-24

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OFFICER REPORT

Site Description

The building housing Upper Lane Fisheries is a freestanding single storey structure constructed of regular coursed stone under a grey flat profile concrete tile pitched roof. The premises are currently used as a hot food takeaway by 'Whiney's Burgers' and operates as a hot food take away.

It is located approximately 60 metres southeast of the junction of Upper Lane, Church Street and Beaumont Street in the centre of Emley village with houses to either side and opposite with the Football Playing fields, club house and gathering area to the rear.

Description of Proposal

The applicant is seeking permission for an extract ventilation system and alteration to the hours of opening.

The flue is to be located on the side elevation, replacing the previous unit. The flue would have a height of 2.5m and would come out of the roof. It has a galvanised steel finish.

The premises are applying to extend the opening hours to between the hours of 17.30 and 22.00 hours seven days a week including bank holidays.

Relevant Planning History

97/92065 – Change of use from butchers to hot food takeaway – Refused 31/10/97 on highway safety and noise nuisance grounds. Appeal allowed 03/06/98

98/90550 – Change of use from butchers shop to fish and chip shop – Refused 29/05/98 for the same reasons as for 97/92065.

2016/92499 – Installation of Extraction Duct – Withdrawn 07/09/16.

2020/92237 - Change of hours and installation of flue - refused

History of negotiations

Kirklees Development Management Charter together with the National Planning Policy Framework and the DMPO 2015 encourages negotiation/engagement between Local Planning Authorities and agents/applicants. The agent has supplied amended plans moving the flue from the rear elevation and provided noise and odour information. However, the concerns are not overcome in terms of appearance. The agent has been made aware that the application will be refused.

Representations

The application was advertised by neighbour letters, which expired on 09/03/2022

As a result of the above publicity, two representations have been received. The material considerations raised include:

- Odours,
- Parking issues,
- Noise generation from the flue.

Denby Dale Parish Council has been consulted and have objected on the grounds of parking issues.

Consultation Responses

K.C. Environmental Health – support the application subject to conditions.

K.C. Highways – Had no objections to the hours or the flue as part of the previous application.

Policy

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the Development Plan unless material considerations indicate otherwise. The statutory Development Plan for Kirklees is the Local Plan (adopted 27th February 2019).

The site is UNALLOCATED on the Kirklees Local Plan Proposals Map

On 12th November 2019, the Council adopted a target for achieving 'net zero' carbon emissions by 2038, with an accompanying carbon budget set by the Tyndall Centre for Climate Change Research. National Planning Policy includes a requirement to promote carbon reduction and enhance resilience to climate change through the planning system and these principles have been incorporated into the formulation of Local Plan policies. The Local Plan predates the declaration of a climate emergency and the net zero carbon target; however, it includes a series of policies which are used to assess the suitability of planning applications in the context of climate change. When determining planning applications, the Council will use the relevant Local Plan policies and guidance documents to embed the climate change agenda.

Kirklees Local Plan Policies

- **LP 1** – Achieving sustainable development
- **LP 2** – Place shaping
- **LP16** – Food & drink uses and the evening economy

- **LP21** – Highway safety
- **LP 22** – Parking
- **LP 24** - Design
- **LP 51** – Protection and improvement of Local Air Quality
- **LP 52** – Protection and improvement of Environmental Quality

Kirklees Council adopted supplementary planning guidance on Hot Food Takeaways on 21st September 2022 which now carries full weight in decision making. This guidance indicates how the Local Planning Authority will assess planning applications for new hot food takeaways under Local Plan policies LP16 (Food and drink uses and the evening economy) and LP47 (Healthy, active and safe lifestyles) and how decisions will be made which balance the need to consider the vitality and viability of centres whilst promoting healthy, active and safe lifestyles. As such, it is anticipated that this SPD will assist with ensuring enhanced consistency in both approach and outcomes relating to Hot Food Takeaways.

National Policies and Guidance:

National planning policy and guidance is set out in National Policy Statements, primarily the National Planning Policy Framework (NPPF) published December 2023, and the Planning Practice Guidance Suite (PPGS) first launched 6th March 2014 together with Circulars, Ministerial Statements and associated technical guidance.

The NPPF constitutes guidance for local planning authorities and is a material consideration in determining applications.

- Chapter 6 – Building a strong, competitive economy
- Chapter 8 – Promoting healthy and safe communities
- Chapter 12 – Achieving well-designed places
- Chapter 15 – Conserving and enhancing the natural environment

Assessment

Principle of development:

The site is without notation on the Kirklees Local Plan (KLP). Policy LP1 of the KLP states that when considering development proposals, the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the NPPF. In terms of extending and making alterations to a property, Policy LP24 of the KLP is relevant, in conjunction with Chapter 12 of the NPPF, regarding design. In this case, existing use has already been established, the principle of development is considered acceptable, and the proposal shall now be assessed against all other material planning considerations, including visual and residential amenity, as well as highway safety.

Impact on visual amenity:

The existing building is a single storey, stone building within a row of stone buildings. There are views of the building from both Upper Lane with respect to the front and the grounds of the football club to the rear. Given the elevated position of the flue together with the height above the apex, the flue is visible from Upper Lane. Furthermore, with the grounds of the football club to the rear, the rear of the building including the flue are highly visible from a public vantage point.

The new extract ventilation flue is unattractive as it is constructed of untreated galvanised grey steel which has a very harsh industrial appearance. Although, amended plans have been received showing it to be repositioned to the side elevation, the new location is still prominent, and the size of the flue is excessive. The scale and prominence would detract from the host building and wider area. The flue is therefore not considered to be acceptable in terms of visual amenity.

Having taken the above into account, the proposed flue would cause any significant harm in terms of visual amenity for both the building itself and for the wider street scene, thereby failing to comply with Policy LP24 of the Kirklees Local Plan and the aims of chapter 12 of the National Planning Policy Framework.

Impact on residential amenity:

Consideration in relation to the impact on the residential amenity of neighbouring occupants shall now be set out, taking into account policy LP24 c), which sets out that proposals should promote good design by, amongst other things, extensions minimising impact on residential amenity of future and neighbouring occupiers.

Hours of opening

The premises are currently subject to a planning condition which limits their opening times as follows: -

Tuesdays 17.00 to 23.00 hours
Wednesday 11.00 to 13.30 hours
Thursdays to Saturdays (inclusive) 11.30 to 13.30 and
17.30 to 23.00 hours.

These restrictions were imposed when planning permission was granted on appeal allowing the building to be used as a hot food takeaway in 1998 (see planning permission no. 97/92065).

This application seeks approval to alter/extend these hours to allow the premises to open between 17.30 and 22.00 hours seven days a week. Whilst accepting that hot food takeaway uses can generate undue noise, and that this building adjoins residential properties with a significant number of other residential properties nearby, it is considered that noise generated by a hot food takeaway operated between these times would not unduly disturb local

residents despite concerns to the contrary. This view is supported by the Council's Environmental Health Service who raise no objections to this element of the proposal.

Extract Ventilation System

The other element of the proposal concerns the retention of the existing extract ventilation system. Since this has already been installed Environmental Health required a data specification sheet for, and details of the make and model of, that system in order to ensure that it does not generate unacceptable noise in itself and to assess its suitability in terms of extracting cooking odours from the premises prior to them being discharged into the atmosphere. Further information in the form of a noise report and an odour assessment have been provided. The information is insufficient, in its current form, to sufficiently evidence appropriate levels of protection for neighbouring residents, as such further information is required to ensure that the surrounding residents will be reasonably safeguarded from undue odour and/or noise from the extraction unit. It is considered that should conditions can be imposed to address outstanding requirements in terms of mitigation avoiding any detriment to nearby occupants.

Having considered the above factors, the proposals are not considered to result in any adverse impact upon the residential amenity of any surrounding neighbouring occupants, complying with Policies LP24, LP51 and LP52 of the Kirklees Local Plan and Paragraph 130 (f) of the National Planning Policy Framework.

Impact on highway safety:

Concern has been expressed by some local residents that allowing the extended opening hours will lead to continued highway safety issues here (i.e. unacceptable levels of additional 'on-street' parking, hazardous vehicle turning movements within the road etc). However, given that roads generally tend to be less busy between the hours of 17.30 to 22.00 it is not envisaged that allowing those hours will lead to sufficient highway safety concerns to justify a further refusal of this application on such grounds This view is supported by the Council's Highways Service.

In view of the above it is considered that the proposals are acceptable in pure highway safety terms reasonably satisfying the requirements of Policies LP21 and LP22 of the Local Plan and of the Highway Design Guide SPD (2019) in this regard.

Other matters:

Carbon Budget

The proposal is a small scale development to an existing building. As such, no special measures were required in terms of the planning application with regards to carbon emissions. However, there are controls in terms of Building

Regulations which will need to be adhered to as part of the construction process which will require compliance with national standards.

There are no other matters for consideration.

Representations:

Two representations have been received. The material considerations raised include:

- Odours,
- Parking issues,
- Noise generation from the flue.

Furthermore, Denby Dale Parish Council have objected on the grounds of parking issues.

These matters are material considerations and have been addressed in the appropriate sections of this report.

Proposed conditions

None as the recommendation is for refusal.

Conclusion:

This application to alter the opening hours of the take away and for the installation of an extract ventilation system including a flue at Upper Lane Fisheries has been assessed against relevant policies in the development plan as listed in the policy section of the report, the National Planning Policy Framework and other material considerations.

The flue, by reason of its size, design and position, forms a prominent and incongruous feature in the street scene. To permit the proposals would be contrary to Policy LP24 of the Kirklees Local Plan and advice within Chapter 12 of the National Planning Policy Framework.

The NPPF has introduced a presumption in favour of sustainable development. The policies set out in the NPPF taken as a whole constitute the Government's view of what sustainable development means in practice.

This application has been assessed against relevant policies in the development plan and other material considerations. For the reasons set out above it is considered that the development would not constitute sustainable development and is therefore recommended for refusal.

Recommendation **Refuse**

Decision Authorisation - Delegated Powers
Application Number: 2022/90266
Officer Recommendation: Refuse
Reasons for refusal

1. The flue, by reason of its size, design and position, forms a prominent and incongruous feature detracting from the host building and wider street scene. To permit the proposals would be contrary to Policy LP24 of the Kirklees Local Plan and advice within Chapter 12 of the National Planning Policy Framework.

Plans and specifications schedule: -

Plan Type	Reference	Web ID	Date Received
Location plan	P101	914970	27/01/2022
Block plan	P102	914969	27/01/2022
Proposed plans	SM02	-	03/08/2022
Data sheet – attenuator	-	914966	27/01/2022
Data sheet – roof hood	-	914965	27/01/2022
Noise assessment	-	957324	20/10/2022
Odour assessment	-	957323	20/10/2022

Pursuant to article 35 (2) of the Town and Country Planning (Development Management Procedure) Order 2015 and guidance in the National Planning Policy Framework, the Local Planning Authority have, where possible, made a pre-application advice service available, complied with the Kirklees Development Management Charter 2015 and otherwise actively engaged with the applicant in dealing with the application.

The agent has supplied amended plans moving the flue from the rear elevation and provided noise and odour information. However, the concerns are not overcome in terms of appearance. The agent has been made aware that the application will be refused.

Report Dated 18/07/2024